APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,606	08/14/2001	Florian Pestoni	ARC920010007US1	9179

			EXAMINER
23334	7590	02/27/2006	PWU, JEFFREY C

FLEIT, KAIN, GIBBONS, GUTMAN, BONGINI
& BIANCO P.L.
ONE BOCA COMMERCE CENTER
551 NORTHWEST 77TH STREET, SUITE 111
BOCA RATON, FL 33487

ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/929,606	PESTONI ET AL.
	Examiner	Art Unit	
	Jeffrey C. Pwu	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *8/5/05 Amendment & 12/20/05 Election*.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *3-14, 20-22, 25-30, 38 and 39* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *3-14, 20-22, 25-30, 38 and 39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____ .

DETAILED ACTION

1.   Claims **3-11, 12-14, 20-22, 25-30**, and **38-39** are pending.

2.   Claims 1-2, 15, 23-24 canceled in the reply filed on 8/5/05.

Election/Restrictions

3.   Claims 16-19 and 31-37 are withdrawn from further consideration pursuant to 37 CFR

1.142(b) as being drawn to a nonelected claim, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on 12/20/05.

Claim Rejections - 35 USC § 102

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5.   Claims **3-11, 12-14, 20-22, 25-30**, and **38-39** are rejected under 35 U.S.C. 102(e) as being

anticipated by Eyal (U.S. 6,389,467).

Eyal teaches claims:

3. A method of operating a virtual jukebox by a group of persons (col.33, line 31; "...

conventional broadcasting employs one radio or television signal to broadcast to listeners or

viewers. Media files disseminated over the Internet today may be distributed in a manner which

is somewhat similar in that the media file is located on a single server (or small group of servers) which is accessed by potentially large number of Internet users. As a result, the experience of the users may diminish due to the limited ability of current systems to scale"), comprising the steps of:

receiving, at a virtual jukebox device (210) that is communicatively coupled to networked devices via a network interface, at least one playback request from at least one of the networked devices for rendering at least one audio file, each of the networked devices being operated by at least one person of the group of persons; (200; "streaming media search and continuous playback system of media resources located by multiple network addresses")

storing the received at least one playback request in a queue in the virtual jukebox device; (fig.1, fig.2, 260, 270, 280, 290, 362-366) requesting a copy of the at least one audio file associated with the at least one playback request;

storing the copy of the requested at least one audio file in the virtual jukebox device; (260, 270, 280, 290, 362-366)

rendering the stored copy of the requested at least one audio file by the virtual jukebox device; (270, fig.15, Media Database Table)

contemporaneously with the step of rendering, receiving at the virtual jukebox device, from the networked devices via the network interface, at least one vote for or against the at least one audio file; (method steps 1410-1450) and

providing audio to the group of persons in a shared acoustical environment, the audio corresponding to the at least one audio file being rendered. (Internet users)

4. The method of Claim 3, wherein the at least one playback request received from the at least

one networked device comprises an indication of location of the associated at least one audio

file.(620, 630, 660-680)

5. The method of Claim 4, wherein the indication of location of the associated at least one audio

file comprises at least one URL (Uniform Resource Locator) for the at least one audio file. (610-

680)

6. The method of Claim 3, wherein the step of storing the received at least one playback request

in the queue comprises the step of storing in the queue at least one queue item associated with

the at least one associated audio file, respectively, wherein each of the at least one queue item

includes a count of the number of times that an associated audio file has been requested.

("number of votes" fig.15; col.29, line 48, "The organization of the media clips may correspond

to a user preferential list where preferred media clips are, for example, listed together or listed

before less preferred clips. The rating module may also determine a genre, category, or other

organization formation through selections or entries received from the playback module 1020)

7. The method of Claim 3, further comprising the step of arranging the received at least one

playback request in the queue in a first-in-first-out order. (col.29, line 6-col.30, line 60)

8. The method of Claim 3, wherein the step of requesting a copy of the at least one audio file

associated with the at least one playback request comprises the step of requesting a copy of the at

least one audio file from a networked device via the network interface. .("play-lists may be

dynamically generated by a web application in response to a request for media playback made on

the user terminal")

9. The method of Claim 8, wherein the step of requesting a copy of the at least one audio file

from a networked device is accomplished in time for rendering at least a portion of the requested

at least one audio file. (630 "Load the URL into an Internet Multimedia playback Software

Component by Providing It the Media URL")

10. The method of Claim 3, further comprising, the step of rendering the stored copy of the

requested at least one audio file, the step of removing from the queue the at least one playback

request associated with the rendered at least one audio file. (figs. 12-16)

11. The method of Claim 3, further comprising the steps of: totaling the received at least one

vote for or against the at least one audio file; calculating the percent of votes for an audio file

currently being rendered relative to the total votes received for and against the audio file;

comparing the calculated percent to a threshold; and stopping the rendering of the audio file

currently being rendered if the comparison does not meet or exceed the threshold. Rating System

1000, Rating Component 1030, Present User a User Interface to Choose Rated Media Clips from

Different Predefined Categories Or Genres 1110, Get User Selection Form Presented Options

1120, Retrieve Pre-generated Playlist Web File for the User Selection 1130, Play Back Media

Clips in a Consecutive Manner From the List 1140, Get New Rating Event From Playback

Interface 1210, Locate Media Clip Record in a Media Database Table 1220, Update Rating Field

in the Media Records According to Select Formula 1230, Add one to Number of Votes Field

1240, Get Media Category Form Categories List (Predefined) 1410, Got a Category 1420, if not

stop)

12. A method, comprising the steps of:

    rendering an audio file; ("rating")

    receiving via a network a message from a networked device, the message comprising one

of the following:

        a vote for the audio file being rendered; and a vote against the audio file being

rendered; ("Rate this song" by users)

        providing a relative vote indication corresponding to a summation of received

votes relating to the audio file being rendered; ("0...Max Rating")

        comparing the relative vote indication to a voting threshold; and stopping the

rendering of the audio file if the relative vote indication does not meet or exceed the

voting threshold. (see Rating System 1000, Rating Component 1030, Present User a User

Interface to Choose Rated Media Clips from Different Predefined Categories Or Genres

1110, Get User Selection Form Presented Options 1120, Retrieve Pre-generated Playlist

Web File for the User Selection 1130, Play Back Media Clips in a Consecutive Manner

From the List 1140, Get New Rating Event From Playback Interface 1210, Locate Media

Clip Record in a Media Database Table 1220, Update Rating Field in the Media Records

According to Select Formula 1230, Add one to Number of Votes Field 1240, Get Media

Category Form Categories List (Predefined) 1410, Got a Category 1420, if not stop)

13. The method of Claim 12, further comprising the step of: contemporaneous with the step of

rendering the audio file, providing audio in a shared acoustical environment, the audio

corresponding to the audio file being rendered. (figs. 12-16)

14. The method of Claim 12, further comprising the step of requesting a copy of the audio file

from a networked device via a network interface.("play-lists may be dynamically generated by a

web application in response to a request for media playback made on the user terminal")

20. A computer readable medium including computer instructions for operating a virtual jukebox

system, the computer instructions comprising instructions for: rendering an audio file; receiving

via a network a message from a networked device, the message comprising one of the following:

a vote for the audio file being rendered; and a vote against the audio file being rendered;

providing a relative vote indication corresponding to a summation of received votes relating to

the audio file being rendered; comparing the relative vote indication to a voting threshold; and

stopping the rendering of the audio file if the relative vote indication does not meet or exceed the

voting threshold. (claim 20 is similarly rejected as in claim 12)

21. The computer readable medium of Claim 20, further comprising computer instructions for:

contemporaneous with rendering the audio file, providing audio in a shared acoustical

environment, the audio corresponding to the audio file being rendered.(fig.15, "rating")

22. The computer readable medium of Claim 20, further comprising computer instructions for:

requesting a copy of the audio file from a networked device via a network interface. (fig.22,

"copyright information")

25. A virtual jukebox system for listening to a same audio file by all listeners of a group of

listeners, the virtual jukebox system including a single set of speakers through which all listeners

of the group can hear the same audio file, comprising: a network interface for communication

with at least one networked device; an audio platform interface for rendering audio files; data

memory comprising a queue for storing at least one playback request from at least one

networked device for rendering at least one audio file corresponding to the at least one playback

request; a program memory; a processor/controller, electrically coupled to the network interface,

the data memory, and the program memory; a queue manager, electrically coupled to the

program memory, for managing the queue; an audio player manager, electrically coupled to the

program memory, for: requesting a copy of the at least one audio file corresponding to the at

least one playback request; storing the copy of the requested at least one audio file in the data

memory; rendering the stored copy of the-requested at least one audio file; and providing audio

in a shared acoustical environment, the audio corresponding to the at least one audio file being

rendered; and a voting manager, electrically coupled to the program memory, for receiving, from

the at least one networked device via the network interface, at least one vote for or against the at

least one audio file. (claim 25 is similarly rejected as in claim 1)

26. The virtual jukebox system of claim 25, wherein the audio player manager renders the stored

copy of the requested at least one audio file contemporaneously with the voting manager

receiving the at least one vote for or against the at least one audio file being rendered. (1410-

1420)

27. The virtual jukebox system of claim 25, wherein the audio player manager requests a copy of

the at least one audio file corresponding to the at least one playback request from a networked

device. (1420-1450)

28. The virtual jukebox system of claim 25, further comprising an autoplay manager, electrically

coupled to the program memory, for storing a list of previously rendered audio files, the audio

files having been rendered in response to received playback requests from networked devices;

selecting an audio file from the list of previously rendered files; and after the rendering of all

audio files associated with playback requests has been completed, rendering the selected audio

file.

29. The virtual jukebox system of claim 25, wherein the autoplay manager stops selecting an

audio file when a request for an audio file is received. (230, 260)

30. The virtual jukebox system of claim 25, further comprising a list of lists, each of the individual lists containing at least one list item corresponding to at least one song that has been rendered by a virtual jukebox system, the at least one song further being associated with a number of votes for and against the at least one song that were cast during its rendering, and a time of last rendering. (280, 284)

38. A virtual jukebox system for allowing multiple users to collectively decide upon listening to a same audio file at a same time in a shared acoustical environment, comprising: a plurality of networked devices, each networked device associated with a user; and a virtual jukebox device, the virtual jukebox device including a speaker; a processor coupled to the speaker; a network interface, coupled to the processor, for communication with the plurality of networked devices; and a memory, coupled to the processor, for storing audio files, the memory further including a virtual jukebox application for receiving a playback request for an audio file from at least one of the plurality of networked devices, receiving from the plurality of networked devices, at least one vote for or against the playback request, requesting from the memory a copy of the audio file corresponding to the playback request, and, in response to votes, providing audio in the shared acoustical environment through the speaker by which all users can hear the same audio at the same time, the audio corresponding to the audio file of the playback request. (claim 38 is similarly rejected as in claim 1)

39. The virtual jukebox system of claim 38, in which, while the audio is being provided, the virtual jukebox application is also for receiving from the plurality of networked devices, at least

one vote for or against continuation of providing of the audio of the playback request, and, in

response to the continuation votes, stopping the providing of the audio. (step 1420 "done")

Response to Arguments

6.   Applicant's arguments filed 8/5/06 have been fully considered but they are not

persuasive.

        With respect to applicant's argument that Eyal fails to teach "providing audio to the

group of persons in a shared acoustical environment, the audio corresponding to the at least one

audio file being rendered". However, examiner respectfully disagrees. Eyal teaches a shared

acoustical environment to a group of internet users. (Also see col.33, line 31; "... conventional

broadcasting employs one radio or television signal to broadcast to listeners or viewers. Media

files disseminated over the Internet today may be distributed in a manner which is somewhat

similar in that the media file is located on a single server (or small group of servers) which is

accessed by potentially large number of Internet users. As a result, the experience of the users

may diminish due to the limited ability of current systems to scale")

        With respect to the argument that Eyal fails to teach "providing audio to the

group of persons in a shared acoustical environment, the audio corresponding to the at least one

audio file being rendered". However, examiner respectfully disagrees. In contrary, Eyal teaches

that each individual users is able to decide which audio file each user selects for play back. See

Rating System 1000, Rating Component 1030, Present User a User Interface to Choose Rated

Media Clips from Different Predefined Categories Or Genres 1110, Get User Selection Form

Presented Options 1120, Retrieve Pre-generated Playlist Web File for the User Selection 1130,

Play Back Media Clips in a Consecutive Manner From the List 1140, Get New Rating Event

From Playback Interface 1210, Locate Media Clip Record in a Media Database Table 1220,

Update Rating Field in the Media Records According to Select Formula 1230, Add one to

Number of Votes Field 1240, Get Media Category Form Categories List (Predefined) 1410, Got

a Category 1420, if not stop. Play-lists may be dynamically generated by a web application in

response to a request for media playback made on the user terminal.

Conclusion

7.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

8.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Jeffrey C. Pwu whose telephone number is 571-272-6798.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

2/18/06

JEFFREY PWU
PRIMARY EXAMINER